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No. 78-1425

In the Supreme Court of the United States

OCTOBER TERM, 1978

JAMES V. AND ESTHER R. COLE, PETITIONERS

v.

COMMISSIONER OF INTERNAL REVENUE

ON PETITION FOR A WRIT OF CERTIORARI TO THE UNITED STATES COURT OF APPEALS FOR THE NINTH CIRCUIT

MEMORANDUM FOR THE RESPONDENT IN OPPOSITION

WADE H. MCCREE, JR.
Solicitor General
Department of Justice
Washington, D.C. 20530

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We invite the Court's attention to the following facts that indicate that the petition for a writ of certiorari was filed out of time. The judgment of the court of appeals was entered on November 22, 1978. The 90-day period for seeking certiorari in civil cases therefore expired on February 20, 1979 (see 28 U.S.C. 2101(c)). The petition, however, was not filed until February 21, 1979.

Since the time limit specified by 28 U.S.C. 2101(c) is jurisdictional (*Dept. of Banking* v. *Pink*, 317 U.S. 264, 268 (1942)), the petition for a writ of certiorari should be denied.

Respectfully submitted.

WADE H. MCCREE, JR.
Solicitor General

MARCH 1979

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